

1 **FEDERAL ELECTION COMMISSION**
2 **999 E Street, NW**
3 **Washington, DC 20463**

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5 **FIRST GENERAL COUNSEL'S REPORT**

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7 RAD REFERRAL: 17L-16
8 DATE REFERRED: June 6, 2017
9 DATE OF NOTIFICATION: June 7, 2017
10 RESPONSE RECEIVED: June 22, 2017
11 DATE ACTIVATED: July 24, 2017

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13 EXPIRATION OF SOL: November 2, 2021
14 ELECTION CYCLE: 2016

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16 **COMPLAINANT:**

RAD Referral

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18 **RESPONDENTS:**

Reform America Fund and Lorri Pickens in her
official capacity as treasure

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21 **RELEVANT STATUTES AND**
22 **REGULATIONS:**

52 U.S.C. § 30104(g)(1)
11 C.F.R. § 104.4(c)

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24 **INTERNAL REPORTS CHECKED:**

Disclosure Reports

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26 **FEDERAL AGENCIES CHECKED:**

None

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28 **I. INTRODUCTION**

29
30 The Reports Analysis Division ("RAD") referred Reform America Fund and Lorri
31 Pickens in her official capacity as treasurer ("the Committee") to the Office of General Counsel
32 for failing to file two 24-Hour Reports totaling \$1,044,256.46 to support two independent
33 expenditures disclosed on its 2016 30-Day Post-General Report. For the reasons set out below,
34 we recommend that the Commission open a MUR and find reason to believe that the Committee
35 violated 52 U.S.C. § 30104(g) by failing to file 24-Hour Reports. Additionally, we recommend
36 that the Commission authorize pre-probable cause conciliation and approve the attached
37 conciliation agreement.

1 **II. FACTUAL BACKGROUND**

2 The Committee is an independent-expenditure-only political committee that registered
3 with the Commission on July 24, 2015.¹ On December 7, 2016, the Committee filed its 2016
4 30-Day Post-General Report ("the Report") covering its activity from October 20, 2016, through
5 November 28, 2016, and disclosing 22 independent expenditures ("IEs") totaling \$2,553,226.92
6 made in opposition to two federal candidates, Hillary Clinton and Russ Feingold.²

7 The Report revealed that the Committee failed to file two 24-Hour Reports to support IEs
8 totaling \$1,044,256.46, which were first disclosed on the Report.³ The IEs were in connection
9 with two expenditures of \$522,128.33, each for two ads disseminated on October 31, 2016,
10 opposing Clinton and Feingold.⁴

11 On March 5, 2017, the Commission sent a Request for Additional Information to the
12 Committee noting the Committee's failure to file the required 24-Hour Reports.⁵ On April 6, the
13 Committee's treasurer called RAD and asked how to resolve the issue.⁶ RAD recommended that
14 the Committee verify that it had filed all relevant reports and advised that the Committee could
15 provide additional clarification for the public record.⁷

¹ See Statement of Organization, filed July 24, 2015.

² See RAD Referral of Reform America Fund, 17L-16 (June 6, 2017) ("Referral"), incorporated herein by reference.

³ *Id.* at 2.

⁴ *Id.* at Attachment 2. Each IE involved purchasing additional airtime for two ads that were already airing, one opposing Clinton, and the other opposing Feingold. *Id.* at 2.

⁵ *Id.* at 2-3.

⁶ *Id.* at 3.

⁷ *Id.*

1 On April 10, the Committee filed an Amended 2016 30-Day Post-General Report, which
2 disclosed no changes in IE activity from the original report. On April 19, RAD contacted the
3 Committee's treasurer to inform the Committee that it could be referred to OGC for potential
4 further action. RAD also informed the Committee that it could file an additional amendment or
5 Miscellaneous Electronic Submission to provide further clarification about the missing 24-Hour
6 Reports. The treasurer stated that she understood and would consider filing a statement.⁸

7 On April 20, the Committee's compliance consultant informed RAD that the Committee
8 should have attached a memo text to the Amended Report filed on April 10, but had
9 inadvertently omitted it, and that the Committee would file an FEC Form 99 to provide further
10 clarification. The Committee filed a Form 99 the next day, which stated that the Committee had
11 procedures in place to ensure that all reports are timely filed, and the two IEs at issue here were
12 "an exception."⁹ In its response to the Notice of Referral, the Committee reiterated that it has a
13 compliance system in place to ensure that all IEs are properly reported and that the two
14 unreported IEs merely "fell through the cracks" during the closing days of the 2016 general
15 election.¹⁰

16 **III. LEGAL ANALYSIS**

17 The Federal Election Campaign Act of 1971, as amended (the "Act"), requires committee
18 treasurers to file reports of disbursements in accordance with the provisions of 52 U.S.C.
19 § 30104(b).¹¹ This requirement includes reporting independent expenditures ("IEs") made by

⁸ *Id.*

⁹ *Id.* at 3-4.

¹⁰ Resp. at 2.

¹¹ 52 U.S.C. § 30104(a)(1).

1 political committees other than authorized committees.¹² Every political committee that makes
2 IEs must report them in its regularly scheduled disclosure reports in accordance with 11 C.F.R.
3 § 104.3(b)(3)(vii).¹³ In addition, political committees that make IEs aggregating \$1,000 or more
4 with respect to a given election after the 20th day, but more than 24 hours before the date of that
5 election, must disclose them within 24 hours following the date of dissemination.¹⁴ These
6 reports, known as 24-Hour Reports, must be filed within 24 hours after each time the committee
7 makes or contracts to make IEs aggregating an additional \$1,000.¹⁵

8 Here, the record demonstrates—and the Committee does not deny—that it failed to file
9 24-Hour Reports for the two IEs totaling \$1,044,256.46. The IEs were disseminated on October
10 31, 2016, the Committee did not file the required 24-Hour Reports, and did not file a Form 99
11 explaining its failure to do so until April 21, 2017. Accordingly, we recommend that the
12 Commission open a matter under review and find reason to believe Reform America Fund and
13 Lorri Pickens in her official capacity as treasurer violated 52 U.S.C. § 30104(g)(1).

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¹² 52 U.S.C. § 30104(b)(4)(H)(iii), *see also* 11 C.F.R. § 104.3(b)(1)(vii).

¹³ 11 C.F.R. § 104.4(a).

¹⁴ 52 U.S.C. § 30104(g)(1)(A); 11 C.F.R. § 104.4(c).

¹⁵ 52 U.S.C. § 30104(g)(1)(B); 11 C.F.R. § 104.4(c).

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7 **V. RECOMMENDATIONS**

8 1. Open a MUR;

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10 2. Find reason to believe that Reform America Fund and Lorri Pickens in her official
11 capacity as treasurer violated 52 U.S.C. § 30104(g)(1);

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13 3. Approve the attached Factual and Legal Analysis;

14 4. Approve the attached Conciliation Agreement; and

15 5. Approve the appropriate letter.

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Lisa J. Stevenson
Acting General Counsel

Kathleen M. Guith
Associate General Counsel for Enforcement

9.21.17

Date



Stephen Gura
Deputy Associate General Counsel



Lynn Y. Tran
Assistant General Counsel



Derek H. Ross
Attorney

Attachment
1. Factual and Legal Analysis

1 **FEDERAL ELECTION COMMISSION**
2 **FACTUAL AND LEGAL ANALYSIS**

3
4 RESPONDENTS: Reform American Fund and Lorri Pickens RR 17L-16
5 in her official capacity as treasurer

6 **I. INTRODUCTION**

7
8 The Reports Analysis Division (“RAD”) referred Reform America Fund and Lorri
9 Pickens in her official capacity as treasurer (“the Committee”) to the Office of General Counsel
10 for failing to file two 24-Hour Reports totaling \$1,044,256.46 to support two independent
11 expenditures disclosed on its 2016 30-Day Post-General Report. For the reasons set out below,
12 the Commission finds reason to believe that the Committee violated 52 U.S.C. § 30104(g) by
13 failing to file 24-Hour Reports.

14 **II. FACTUAL BACKGROUND**

15 The Committee is an independent-expenditure-only political committee that registered
16 with the Commission on July 24, 2015.¹ On December 7, 2016, the Committee filed its 2016
17 30-Day Post-General Report (“the Report”) covering its activity from October 20, 2016, through
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⁷ *Id.*

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1 “an exception.”⁹ In its response to the Notice of Referral, the Committee reiterated that it has a
2 compliance system in place to ensure that all IEs are properly reported and that the two
3 unreported IEs merely “fell through the cracks” during the closing days of the 2016 general
4 election.¹⁰

5 III. LEGAL ANALYSIS

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17 24-Hour Reports for the two IEs totaling \$1,044,256.46. The IEs were disseminated on October

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¹¹ 52 U.S.C. § 30104(a)(1).

¹² 52 U.S.C. § 30104(b)(4)(H)(iii), *see also* 11 C.F.R. § 104.3(b)(1)(vii).

¹³ 11 C.F.R. § 104.4(a).

¹⁴ 52 U.S.C. § 30104(g)(1)(A); 11 C.F.R. § 104.4(c).

¹⁵ 52 U.S.C. § 30104(g)(1)(B); 11 C.F.R. § 104.4(c).

Factual and Legal Analysis
RR 17L-16 (Reform America Fund)

1 31, 2016, the Committee did not file the required 24-Hour Reports, and did not file a Form 99
2 explaining its failure to do so until April 21, 2017. Accordingly, the Commission finds reason to
3 believe Reform America Fund and Lorri Pickens in her official capacity as treasurer violated 52
4 U.S.C. § 30104(g)(1).